

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 140

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO TAXATION OF BEER AND WINE; AMENDING SECTION 23-1008, IDAHO CODE, TO REVISE THE TAX IMPOSED UPON BEER, TO DEFINE "WHOLESALE SALES PRICE," TO PROVIDE FOR CREDITS AND REFUNDS, TO PROVIDE THAT ANY WHOLESALER OR BREWER WHO SELLS BEER TO AN IDAHO RETAILER UPON WHICH TAXES HAVE NOT BEEN PAID SHALL BE GUILTY OF A MISDEMEANOR, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE THE DISTRIBUTION FORMULA AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 23-1319, IDAHO CODE, TO REVISE THE EXCISE TAX ON WINE, TO DEFINE "WHOLESALE SALES PRICE," TO REVISE THE DISTRIBUTION FORMULA AND TO MAKE A TECHNICAL CORRECTION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-1008, Idaho Code, be, and the same is hereby amended to read as follows:

23-1008. TAX – DISTRIBUTION – RULES – REPORTS. (1) A tax of ~~four dollars and sixty five cents (\$4.65) per barrel of thirty one (31) gallons, and a like rate for any other quantity or fraction thereof,~~ seven and eight-tenths percent (7.8%) of the wholesale sales price is hereby levied and imposed upon ~~each and every barrel of~~ beer sold for use within the state of Idaho. For purposes of this section, "wholesale sales price" means the net invoice price for which the beer is sold to the retailer, exclusive of any rebates or discounts for prompt payment.

(a) In the case of beer sold at retail by a brewer, the tax imposed by this section shall be seven and eight-tenths percent (7.8%) of the brewer's costs of goods sold, computed in accordance with the provisions of the Internal Revenue Code, as defined in section 63-3004, Idaho Code, relating to income taxation. Sales of beer by a wholesaler or brewer for the purpose of and resulting in export of beer from this state for resale outside this state shall be exempt from the taxes on beer imposed by this chapter.

(b) Any wholesaler or brewer who shall sell beer to any retailer located in this state, upon which the tax herein imposed has not been paid and any person who shall purchase, receive, transport, store or sell any beer upon which the tax herein imposed has not been paid, shall be guilty of a misdemeanor, and any beer so purchased, received, transported, stored or possessed or sold shall be subject to seizure by the commission, any inspector or investigator of the commission, or by any sheriff, constable or other police officer, and the same may be removed and kept for evidence. Upon conviction of any person for violation of this section, the said beer, and all barrels, kegs, cases, cartons and cans containing the same shall be forfeited to the state of Idaho, and, in addition, the person so convicted shall be subject to the other penalties in this act chapter prescribed.

(c) Beer and all barrels, kegs, cases, cartons or cans so forfeited to the state of Idaho shall be sold by the commission at public auction to any brewer, wholesaler or retailer,

licensed under the provisions of this ~~act~~ chapter, making the highest bid. Such sale shall be held at such place and time as may be designated by the commission after reasonable notice thereof given in such manner and for such time as the commission may by rule prescribe. From the purchase price received upon such sale, the commission shall first deduct an amount sufficient to pay the tax due on such beer, and to pay all costs incurred in connection with such sale. The commission shall deposit the balance remaining with the state treasurer, who shall place the same in the general ~~account~~ fund of the state of Idaho, and it shall become a part thereof.

(2) The revenues received from the taxes, interest, penalties, or deficiency payments imposed by this section shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by law to be paid by the tax commission shall be paid through the state refund account and those moneys are continuously appropriated.

(b) The balance remaining after distributing the amount in paragraph (a) of this subsection shall be distributed as follows:

(i) ~~Twenty~~ Fifty-eight percent (~~20~~58%) shall be distributed to the substance abuse treatment fund which is created in section 23-408, Idaho Code;

(ii) ~~Thirty-three~~ Nine and five-tenths percent (~~33~~9.5%) shall be distributed to the permanent building ~~account~~ fund; and

(iii) The remainder shall be distributed to the general ~~account~~ fund.

(3) The commission is empowered, and it shall be the commission's duty to prescribe rules:

(a) For reports by carriers for hire and also all other carriers owned and/or employed, directly or indirectly, by out-of-state brewers, dealers or other persons, of all deliveries of beer in and into the state of Idaho, stating especially the origin and destination of the beer, the quantity thereof, and also the names and addresses, respectively, of the consignors and consignees.

(b) For reports by out-of-state brewers and manufacturers of beer, of all shipments by them of beer into the state of Idaho, stating especially the matters mentioned in paragraph (a) of this subsection.

SECTION 2. That Section 23-1319, Idaho Code, be, and the same is hereby amended to read as follows:

23-1319. EXCISE TAX – SALES INCLUDED – REFUND FOR EXPORT SALES – REFUND FOR BREAKAGE OR SPOILAGE – DISTRIBUTION OF REVENUE. Upon all wines sold by a distributor or winery to a retailer or consumer and upon all wines sold and shipped directly to Idaho state residents by an out-of-state wine manufacturer holding a wine direct shipper permit under section 23-1309A, Idaho Code, for use within the state of Idaho pursuant to this chapter there is hereby imposed an excise tax of ~~forty five cents (45¢) per gallon~~ four and one-half percent (4.5%) of the wholesale sales price of such wine. For purposes of this section, "wholesale sales price" means the net invoice price for which the wine is sold to the retailer, exclusive of any rebates or discounts for prompt payment. In the case of wine sold at retail by a winery or by a wine direct shipper permit holder, the tax imposed by this section shall be four and one-half percent (4.5%) of the winery's or wine direct shipper permit holder's costs of goods sold, computed in accordance with the provisions of the Internal

Revenue Code, as defined in section 63-3004, Idaho Code, relating to income taxation. Sales of wine by a distributor or winery for the purpose of and resulting in export of wine from this state for resale outside this state shall be exempt from the taxes on wine imposed by this chapter.

(a) Every sale of wine by a distributor to a retailer shall constitute a sale of wine for resale or consumption in this state, whether the sale is made within or without this state, and the distributor shall be liable for the payment of taxes. In every transfer of wine by a licensed winery to its licensed retail outlet, the winery shall be liable for payment of taxes.

(b) When wine has been destroyed by breakage or has spoiled or otherwise become unfit for beverage purposes prior to payment of taxes on it, the distributor, upon satisfactory proof of destruction or spoilage, shall be entitled to deduct from existing inventories, subject to tax, the amount of wine so destroyed or spoiled.

(c) If the tax commission determines that any amount due under this chapter has been paid more than once or has been erroneously or illegally collected or computed, the commission shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount then due and payable to the commission from that person and any balance refunded to the person by whom it was paid or to his successors, administrators or executors. The commission is authorized and the state board of tax appeals is authorized to order the commission in proper cases to credit or refund such amounts whether or not the payments have been made under protest and certify the refund to the state board of examiners.

(d) No credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless before the expiration of that period a claim is filed by the taxpayer. The three (3) year period allowed by this subsection for making refunds or credit claims shall not apply in cases where the tax commission asserts a deficiency of tax imposed by law, and taxpayers desiring to appeal or otherwise seek a refund of amounts paid in obedience to deficiencies must do so within the time limits elsewhere prescribed by law.

(e) All revenue received pursuant to this chapter shall be distributed as follows:

(1) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims as authorized in subsection (c) of this section and those moneys are continuously appropriated.

(2) The balance remaining after distributing the amount in paragraph (1) of this subsection shall be distributed as follows:

(i) ~~Twelve~~ Fifty-eight percent (~~12.5~~58%) shall be distributed to the substance abuse treatment fund which is created in section 23-408, Idaho Code;

(ii) ~~Five~~ One and one-half percent (~~1.5~~1.5%) shall be distributed to the Idaho grape growers and wine producers commission account; and

(iii) The remainder shall be distributed to the general ~~account~~ fund.

(f) Any person who is not a distributor or winery but who makes, whether as principal, agent or broker, any sales of wine not otherwise taxed under this section and not exempt from such tax, shall be liable for payment of taxes imposed by this section. This subsection shall not impose tax on wine sold pursuant to section 23-1336, Idaho Code.